IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 541 OF 2001

Shivaji Pandurang Babar .. Applicant

Vs.

Prakash Pandurang Pawar and ors. .. Respondents

Mr. S.G. Deshmukh for applicant.
Mr. Amit B. Borkar for Respondent Nos.1 to 3.

CORAM: B.H. MARLAPALLE, J.

Date : June 13, 2005.

P.C.:

1. Heard the learned counsel for the applicant who had filed Regular Civil Suit No.182 of 1994. In the said suit he submitted an application at Exh.74 on or about 13/7/2000 seeking leave to withdraw the suit, but with a further permission for institution of fresh suit with respect to the suit property. The said application was partly allowed by the impugned order dated 7/8/2000 in as much as liberty was granted to withdraw the suit but permission to institute fresh

suit on the same cause of action was rejected.

2. The learned Judge of the trial court noted that the suit was filed for injunction on the basis of the cause of action that arose in May 1994 and for filing such a suit the limitation is of three years from the date of cause of action. If a fresh suit was allowed to be instituted on the same cause of action, it would be obviously extending the period of limitation and, therefore, such a relief should not be granted.

3. The learned counsel for the applicant submitted that the applicant’s liberty to file the fresh suit for other reliefs other than injunction on separate cause of action or on the same cause of action could not be denied by the trial court. Suffice to say, the order impugned rejecting the permission is applicable only for the suit on the same cause of action and for the same relief of permanent injunction and as a matter of abundant precaution it

is clarified that the liberty of the applicant to file a fresh suit with any other cause of action and/or for any other reliefs is not taken away by the impugned order.

4. The Civil Revision Application is disposed off.

(B.H. Marlapalle,J.)